

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
1998 Biennial Regulatory Review --	)	WT Docket No. 98-182
47 C.F.R. Part 90 - Private Land Mobile	)	RM-9222
Radio Services	)	
	)	
Replacement of Part 90 by Part 88 to Revise	)	PR Docket No. 92-235
the Private Land Mobile Radio Services and	)	
Modify the Policies Governing Them	)	
and	)	
Examination of Exclusivity and Frequency	)	
Assignment Policies of the Private Land	)	
Mobile Services	)	

To: The Commission

**COMMENTS OF GLOBAL CELLULAR COMMUNICATIONS, INC.**

Global Cellular Communications, Inc. ("Global"), by its attorneys and pursuant to Section 1.415 of the Rules, hereby submits its Comments in response to the Commission's Notice of Proposed Rulemaking, FCC 98-251, released October 20, 1998 in the captioned proceeding ("NPRM"). Global operates a "Phase I" nationwide 220 MHz system in 28 geographic areas on a PMRS, non-interconnect basis. Global has additional construction deadlines respecting its system in September, 2000 and September, 2004. In addition, Global has to compete with "Phase II" nationwide 220 MHz licensees and with nationwide and regional service providers in other frequency bands licensed under Part 90, and has certain construction and operation needs imposed on it by these private sector concerns. Therefore, Global has standing to seek a level playing field among similarly-situated Commission licensees holding nationwide and other geographic area authorizations from the Commission.

In these Comments, Global notes the unjustified favoritism which the Commission has

continuously displayed in favor of all other nationwide licensees under Part 90 at the expense of Phase I nationwide 220 MHz licensees, and requests that the Commission, at long last, decree a level playing field.

## **BACKGROUND**

With the sole exception of Phase I nationwide 220 MHz licensees, the Commission has a uniform policy respecting construction and operation of additional base station facilities by geographic area spectrum licensees during their build-out period -- the Commission allows them to construct within their licensed geographic area first, and notify the Commission afterward. *See, e.g.*, §22.165 (paging and cellular telephone); §24.409(b) (narrowband PCS); §24.809(b) (broadband PCS); §90.493(b) (paging); §90.763(b)(4) (Phase II regional and local 220 MHz); §§90.763(a) & 90.769 (Phase II nationwide 220 MHz). Never has the Commission set forth any policy reason for this disparate treatment.

When the Commission first created the allocation for nationwide 220 MHz licensing in 1991 (long before the advent of auction authority), the Commission did not discuss the matter whatsoever in its *Report and Order in PR Docket No. 89-552*, 6 FCC Rcd. 2356 (1991). When one of the original Phase I nationwide 220 MHz licensees suggested, back in 1995, that the Commission either declare that Phase I nationwide licensees need only notify the Commission post-construction under current rules or waive the rules to put Phase I licensees on an even footing, the Commission responded by requesting comments. *See Public Notice, Commission Seeks Comment on Comtech Petition for Declaratory Ruling that Licensees of a Nationwide 220 MHz Mobile Communications System Are Not Required to License Separately Each of the System's Base Stations*, DA 96-38,

released January 19, 1996 (“*Comtech Notice*”).<sup>1</sup> The comments in response were 100% in favor of having the then-licensed nationwide 220 MHz commercial licensees subject to the same requirements (all of which are post-construction) as apply to other geographic-area service licensees.<sup>2</sup> However, the Commission came up with a method of continuing to discriminate against Phase I nationwide 220 MHz licensees without having to justify its action – to this day, the Commission has steadfastly refused to issue any decision in that proceeding, thereby preserving the skewed playing field without having to say why.

When the Commission subsequently engaged in further rulemaking concerning 220 MHz, the Commission created the so-called Phase II nationwide 220 MHz commercial allocations, and required such prospective licensees only to notify the Commission at two post-construction points as to what facilities had been constructed over the preceding years.<sup>3</sup> Global and other interested parties sought reconsideration of the continuing unfair and unexplained discrimination against the newly-dubbed “Phase I” nationwide 220 MHz licensees. Again, no person opposed these requests for reconsideration. However, the Commission again declined to conform Phase I nationwide 220 MHz regulations to those of all similarly-situated services. This time, in denying reconsideration, the Commission put forth a reason, of sorts – which read as follows:

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<sup>1</sup>The reason the *Comtech Notice* was not released until 1996 was due to the government shutdown at the time. The Commission’s staff informally advised all licensees to obtain prior approval of each and every base station unless and until that proceeding was resolved.

<sup>2</sup>At that time, there was not yet any allocation of spectrum for what would later become the Phase II nationwide 220 MHz licenses, so the Commission was not yet discriminating between identically-situated nationwide 220 MHz commercial licensees. That would come later. *See text, infra.*

<sup>3</sup>*See, 220 MHz Third Report and Order*, 12 FCC Rcd. 10943 (1997).

We note that an independent record regarding this issue has already been created in response to a petition for declaratory ruling, and we believe it would be more appropriate to consider the question in the context of that proceeding. [Footnote therein citing *Comtech Notice*.]

*Memorandum Opinion and Order on Reconsideration in PR Docket No. 89-552 et al.*, FCC 98-93, released May 21, 1998, 13 FCC Rcd. \_\_\_\_ at ¶165.<sup>4</sup> Although the record has been closed in the *Comtech Notice* proceeding for almost three years, although opposing parties have had multiple opportunities to come forward, either in the *Comtech Notice* proceeding or in opposition to the petitions for reconsideration of the *Third Report and Order*, *supra*, and none has ever appeared, the Commission has steadfastly declined to issue any decision in that case.

### DISCUSSION

The identities of individual Commissioners have changed, as have the identities of the leading staff members at the Bureau level. The current Commission inherited this unfair regulatory situation, which dates back years. The Commission can cure it by simply making the Phase I nationwide 220 MHz licensees identify all locations (and frequencies built at each location) in the already-mandatory six-year and ten-year construction benchmark reports.<sup>5</sup> Such post-construction reporting makes sense, unlike requiring Phase I nationwide licensees (as is now the case) to file a Form 600 application to be thrown into the queue with thousands of local, site-by-site Part 90 license applications, to be processed one at a time as and when such applications come to the front of the

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<sup>4</sup>Why the Commission could not have consolidated the *Comtech Notice* proceeding, or at least resolved the *Comtech Notice* proceeding simultaneously, were questions the Commission chose not to answer.

<sup>5</sup>See Section 90.725(d) of the Rules. (That rule also required two-year and four-year benchmark reports, which were filed, thereby providing the Commission with redundant information.)


lengthy processing line in Gettysburg. That way, when demand justified a new location, or the relocation of an existing facility, a Phase I nationwide 220 MHz licensee could do what its competitors do today – it could build the new facility and use it to serve customers right then, not six months later.

### **CONCLUSION**

This is a “no-brainer.” It is fair, it is in the public interest, no person will object to it, and if the Commission fails to adopt it, Global and possibly others will seek review in the Court of Appeals, where the Commission will be unable to justify its position. The Commission should eliminate site-by-site pre-construction licensing for nationwide Phase I 220 MHz licensees, and rely instead on the information already required post-construction in the benchmark reports to be filed pursuant to Section 90.725(d).

Respectfully submitted,

**GLOBAL CELLULAR COMMUNICATIONS, INC.**

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